(1)

Supreme Court, U.S.
FILED

99 953 JUL 12 1999

No. OFFICE OF THE CLERK

**IN THE**

# Supreme Court of the United States

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JOHN AMES
Petitioner,

v.

THE STATE of MAINE
The MAINE DEPARTMENT of HUMAN SERVICES
JUDGE EUGENE BEAULIEU
JANET H. MOORE
WILLIAM MOORE
MARTHA J. HARRIS
PAINE & LYNCH Attorneys at Law
Any John Does

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**APPLICATION OR PETITION**
**for**
**WRIT OF MANDAMUS**

---

John Ames
P.O. Box 289
E. Winthrop, Maine
04343
207-395-2588

8 pp

**Motion- For leave to file petition or application for writ of mandamus - in the Supreme Court of the United States - ( under rule 17. )**

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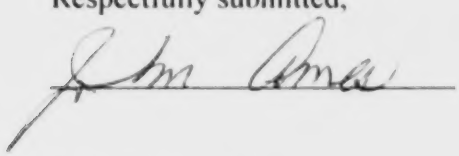
John Ames petitioner, a resident of Marysville, Yuba, California, mailing address P.O. Box 289, E. Winthrop, Maine, moves that this court grant petitioner leave to file a petition for a writ of mandamus, submitted with this motion, the petition being referred to and made a part of this motion for all purposes.

Petitioner tends the amount of $300-, Postal Money Order S. N. 83915480272, as cash deposit for costs as required by rule 38 (a).

Petitioner requests that the petition be filed and set for hearing, and for any other relief, general and special, to which he may be entitled.

October 29, 1999

Respectfully submitted,



John Ames Pro se

## STATEMENT OF THE CASE

John Ames and Janet Ames [now Moore] were first married in Hollywood Florida in June of 1957. They had five children. Janet first divorced John in 1976. She explained she wished to replace John with Charles Clapper, one of John's employees. She advised "I should not close any doors in our relationship." John took none of the marital property, except his hand tools, giving Janet the family business including three houses. Janet offered not to request alimony. John moved to California in 1977. In 1978 Janet filed bankruptcy and moved to California to be with John; the children Keith 17 and John Jr. 13 moved with her. They bought a house in Willits, Ca. and remarried in Reno Nev., one dependant child remaining at home.

John continued to operate his electrical contracting business. In about a year Janet complained of personal problems and asked for some time to be with her relatives in Maine. John agreed to accompany her and stay as long as funds allowed. They towed John's travel trailer as a place *to live in Maine.* Keith chose to stay in California until our return. John returned to California, alone in 1981. In August of 1982, expecting Janet to join him, John rented an apartment in Marysville Ca. Instead she moved in with Gene Drake of Bucksport Me. In August of 1982 Janet divorced John a second time after a *22 month* marriage.

Court records demonstrate that Jack Miller, a California deputy sheriff, alleged personal service on John on Oct. 22, 1982. In 1983 an *ex parte* divorce and *default* monetary judgement was issued by **Judge Beaulieu** at Maine District Court, in Bangor, Me. John received a judgement by mail, his only notice. Foregoing marriage, Janet lived with Eugene Drake the next *ten* years. John was never unfaithful to any marriage obligations; nor did he commit any cruel or abusive acts. He did not answer any complaint or submit to Maine jurisdiction.

From the 1983 judgment until 1993, *10 years*, Janet requested no payment, sleeping on her alleged rights. Shortly before his retirement she filed with the D.H.S. requesting payment. Abruptly thereafter, the children of age and married, Janet left Eugene to marry William Moore of Millford, Maine. In Feb. 1994, under the threat of imprisonment made by the Maine Department

of Human Services, I sent $300 per month. Payments were made until May of 1996 and presently continue by deductions from John's S.S. benefits. The S.S.A. deducted the $300 without a court order.

John Jr. the youngest child was 18 years old in 1987. John Sr. had no personal property in the state of Maine in 1982 or 1983. In 1984 John Sr. married Mary Wilson of Marysville Ca. He worked in his Ca. business from 1977 until 1996 when was forced to retire at the age of 61 because of two accidents, in 1994 and 1995. My present income is $843 S.S. disability less the $300 garnishment sent to Me. D.H.S. I am a Korean war veteran and have V.A. medical benefits. Mary, my wife, works in day care her income is about 11,000 annually.

In 1999 Janet left her present husband, William Moore, and presently lives with her son Keith, in Bangor Maine. Janet has worked for the State of Maine from about 1985.

---

On Dec. 29,1997 I filed suit at U.S. District Court in Bangor, Maine. It was filed against Janet to set aside the 1983 judgment, case 97-272-B. On Jan. 2, 1998 the case was dismiss, as frivolous, by Magistrate Judge Eugene Beaulieu. Magistrate Beaulieu is the same Judge that issued the 1983 judgment 15 years previously. U.S. Judge Morton Brody affirmed Judge Beaulieu's dismissal in January of 1998.

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**Argument**

The petitioner believes his civil rights have been violated. In 1983 a monetary judgment was issued by Maine District Court. It was issued by Judge Eugene Beaulieu. The petitioner believes this judgment has been void been from its inception, therefore the circumstances dictate mandamus lies in this case. The petitioner wishes to have this case filed under **Rules of the Supreme Court of the United States, rule 17.**

(1994) "Judgments" 46 Am Jur 2d § 16 @ 382 states:

"To be valid and enforceable, a judgement must be supported by three elements:

(1) the court must have jurisdiction of the parties;

(2) the court must have jurisdiction of the subject matter;

(3) the court must have power to render the particular judgment."

The court had none of the three elements in the 1983, *monetary judgment holding* of the, divorce action.

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The State of Maine, and its courts system, usurped its authority by allegedly serving a California resident, in the state of California in 1982. "The writ of mandamus will issue to remedy an unauthorized assumption of jurisdiction." *(1970) "Mandamus" 52 Am Jur 2d §312 @ 641.* The petitioner did not respond, was truly unaware of this legal action. The State of Maine did not follow its own rule 4 (f), service by mail, in this divorce action. However even that method would have been invalid in this case, to issue a monetary judgment. The State of Maine cannot support the theory of jurisdiction by means of state long-arm jurisdiction, in a monetary judgement, divorce action. There is no breach of contract , nor *tort* or any cause to support a monetary judgment. Also the facts of the case establish a monetary judgment issued on the basis of service on a nonresident, *not* served *within* the territorial boundaries of the forum make any monetary judgment void from its inception. In summary the Maine Court has never had *jurisdiction in personam;* thus any monetary judgment issued by the state court is void. Penoyer v. Neff 95 U.S. 714, (1877) , L Ed. 565, 81 A.L.R.

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The petitioner is convinced the United States Supreme Court is the only court to posses the power of interstate service of process, and that authority only when the Court has jurisdiction in a case, that is when a U.S. citizen has the right, and leave of court, to file in the Supreme Court and does file. Article III § 2 [2] of the U.S. Constitution gives that right to the Court, but does not give that right to any state court.

The 1983 monetary judgment, in that divorce action, by the State of Maine has violated the petitioners civil rights under the 14th Amendment §1 of the United States Constitution, "Due Process of Law" and also "The Supremacy Clause". The facts of this case show, the state of Maine has violated Federal law as well, 42 U S C § 1983 and 1 U S C § 7.

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"The *passage of time* cannot make a void judgment valid."
**(1994) "Judgments" 46 Am Jur 2d § 16 @ 382.**

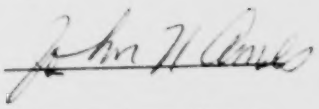
The petitioner has not had an opportunity to present this case in court and is now requesting relief through a writ of mandamus. The petitioner feels the merits of this case are adequate for the Court to grant a writ of mandamus.

The petitioner has a complete, 24 page, request for writ of mandamus awaiting premission to file in this Court; the contents of which is at the end of this brief, see page (i) in the appendix.

The facts of 1983 divorce actions clearly show that the monetary judgment could be not validly issued in that ex parte action; therefore, the petitioner is requesting costs, restitution and damages as defined in the 24 page petition.

Respectfully submitted,

On October 29,1999



John N. Ames Pro se

**APPENDIX**

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**THIS PAGE, CONTENTS, IS A COPY OF PAGE (iii) IN THE 24 PAGE PETITION FOR WRIT OF MANDAMUS AWAITING APPROVAL TO BE FILED IN THIS COURT.**

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Any John Does

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## PETITION FOR WRIT OF MANDAMUS

---

John Ames
P.O. Box 289
E. Winthrop, Maine
04343
207-395-2588

30PP

## QUESTIONS PRESENTED

(1) In this case, may a Maine court gain valid personal jurisdiction, in order to issue a monetary judgment in a divorce action, by personal service on a *nonresident* **outside** the forum state?
(2) Does the fact that the petitioner did not receive any type of notice invalidate the monetary judgment in this case?
(3) Is this case an example of a violation of civil liberties guaranteed by the 14th amendment, due process of law?
(4) Was Janet Moore responsible for the loss of John's civil rights; by securing a monetary judgment "under the color of state law", for the purpose of 42U.S.C.A.sec.1983, governing the deprivation of civil liberties?
(5) In this case, is the state of Maine long-arm statute valid to gain personal jurisdiction over John Ames?
(6) Is it possible for *any* actionable breach or tort to arise from the marriage contract in this case?
(7) Can a valid judgment for alimony be issued, in this case, by a Maine court although Maine does not have any statute covering alimony?
(8) In this case, may a Maine court issue a judgement for alimony or child support when:
(a) John Ames does not meet the requirements for the Maine long-arm statute?
(b) He is a nonresident, not served in the forum state?
(c) None of his property was within the state of Maine?
(9) In this case, are any of the following grounds for the Maine court to issue alimony or child support:
(a) Alleged unfaithful to marriage obligations?
(b) Alleged cruel and abusive treatment?
(10) Is it a prerequisite to be domiciled in Maine, submit to the court, or be served within the state, for a Maine court to issue a judgement for child support or alimony, in this case?
(11) Did John Ames commit an actionable tort, in this case?
(12)Does John meet Maine long-arm jurisdiction requirements?
(13) May the S.S.A. withhold benefits without a court order?
(14) Is it necessary to commit a tort or breach for Maine to apply the long arm-statute, this case?

(15) In this case should there have been an judgment for alimony after only a *22 month* marriage?
(16) Does the fact that Janet slept *10 years* on her alleged judgment rights constitute estoppel by laches?
(17) Were Judges Beaulieu and Morton in error in their decision held in federal case #97-272-B?
(18) If Maine Rules of Civil Procedure Rule 4 (e) and (f) are applied in case 82-DV-422 are they ambiguous and vague?
(19) In this case, should Rule 4 (f), the word *may*, be held mandatory to be valid?
(20) Is Maine statute M.R.S.A. 19 sec.422 sub article 1, Extended Personal Jurisdiction, invalid as applied by the Maine courts in this case, divorce action 82-DV-422?
(21) Has the monetary judgment in the divorce action been a nullity, void, and without effect from its inception?
(22) In this case, can the passage of time render this judgment valid and binding?
(23) Is alimony just for this *22 month* marriage?
(24) Is marriage the consideration in the marriage contract , in this case?
(25) Does divorce terminate the marriage contract in this case?
(26) Do all marriage contract obligations cease at the time of the divorce, in this case?
(27) May personal rights or obligations, *alimony or child support,* flowing from this former marriage be assigned, transferred, or delegated to the state Dept. of Human Services for collection?
(28) Does spouse, in this case, mean a married man or woman a condition before divorce?
(29) Can spouse, in this case, mean a relationship to each other after the divorce?
(30) In divorce action, case 82-DV-422, is the notice "Important Warnings" vague and ambiguous; there is no warning of a request by the plaintiff seeking alimony?
(31) In this case, is the use by the court of vague or ambiguous statutes a violation of the defendants constitutional rights ?
(32) Is the U.S. Supreme Court the only court with authority to issue interstate service of process?
(33) May a court Maine order this defendant to pay council fees ?

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12 .....Allied Chemical Corp. Inc.(1980U.S.)
66 L Ed.2d 193,1980 Trade Cas Par. 63620.
1 ..... 3.....81 A.L.R., Annotated
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1 .....4.....A.L.R. "Procedure" § 2.14 @ 73.
2 .....5.....A.L.R. "Procedure" § 2.14 @ 73.
2 .....6.....A.L.R. "Procedure" § 2.16 @ 83.
8 .....19.....(Blacks Law Dictionary) 6th Ed.
"Garnishments" @ 680.
12 .....Burnham v. Superior Ct.
495 U.S. 604 @ 605.
8 .....17.....(1998) "Constitutional Law"
16 Am Jur 2d § 176 @ 567.
2 .....7.....(1998) "Constitutional Law"
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7 .....16.....(1998) "Constitutional Law"
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9.....22.....(1995) "Courts" 20 Am Jur 2d
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9 .....23.....(1995) "Courts" 20 Am Jur 2d
§ 115.
10 .....26.....(1995) "Courts" 20 Am Jur 2d
§ 106 @ 408.
11 .....33,34.(1995) "Courts" 20 Am Jur 2d
§ 49 @ 368,..... §58 @ 375.
6 .....13.....(1998) "Divorce and Separation"
24 Am Jur 2d § 203 @ 906.
12 .....37.....(1997 Miss.) Hamm v. Hall
693 So.2d 906
5 .....10.....(1998) 907 "Husband and Wife"
41 Am Jur 2d § 230 @ 153.

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12 .....35.....(1994) "Judgments" 46 Am Jur 2d § 16 @ 278
2 .....(1978) Kulko v. Superior Court Ca. 436 U.S. 84 @ 85 (d),4360 1 Ed.2d
11.....MAINE RULES OF COURT : Rule 4 (e), (f).
12.....36.....(1998) "Mandamus" 52 Am Jur 2d SUPP. § 35.
1.....1,2.....(1970) "Mandamus" 52 Am Jur 2d § 4 @ 333,.....§ 28 @ 353.
9.....20.....(1990)"Mandamus" 52 AM Jur 2d SUPP. §18 @ 82.

(1970) "Mandamus" 52 Am Jur 2d
9.....21,24.....§49 @ 373...§311 @ 640,
9.....25.....§312 @ 641.
10.....27,28.....§ 65 @ 390. .....§ 77 @ 398,
10.....29,30.....§ 82 @ 405,.....§303 @ 633.
14.....38.....§ 4 @ 333, 334.
14.....39.....§ 5 @ 334, 335.
15.....41.....§ 28 @ 353 ,354.
15.....40.....§ 29 @ 354.
8.....18.....(1970) "Marriage" 52 Am Jur 2d § 5 @ 668.
1,13,14.....Penoyer v. Neff 95 U.S.714,(1877) L Ed 565, 81 A.L.R.

(1990) "Process" 62B Am Jur 2d
5.....9,11.....§ ..12 .. @ 753,....§202 @ 905.
6.....12.....§ 203 .. @ 906.
7.....14,15.....§ 173 .. @ 878,...§186 @ 890.
9.....22.....§ ..74.

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2.....Stanley v. Jefferies 86 Mont. 11,
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47 N.E.302.

14.....Stanley v. Stanley (Me. 1970)
271 A 2d 636, @ 637.

17 .....(1990) "Statutes" 73 Am Jur 2d
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4,10, 12 .....42 U.S.C.A. § 1983.

1,13,14,15.....U.S. Constitution Article III § 2. [2]
"Original Jurisdiction"

13(12) ...."Spouse Defined...1 USCS § 7.

8 .....28 USCS § 1361
435 F SUPP.127,affmd.(CA1Me.)
583 F 2d 9.

1,14 .....U.S. Constitution
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2,6,8 .....U.S. Constitution
"Due Process Clause"
Amendment 14

## JURISDICTION OF THE U.S. SUPREME COURT IN THIS CASE

UNITED STATES CONSTITUTION ART. III § 2 [2]

The U.S. Supreme Court has original jurisdiction in this action, I am requesting a writ of mandamus under ***rule 17***.

"Mandamus is an original, as distinguished from an appeal. ...but has for its purpose the protection of purely civil rights." [1]

"...the Supreme Court shall have original jurisdiction of all cases affecting ambassadors, or other public ministers, and consuls and those cases in which a ***state*** shall be a party..." [2]

## CONSTITUTIONAL PROVISIONS

"The general rule, sense the case Pennoyer v Neff 95 U.S. 714, is that a personal judgment rendered by a state court against a nonresident of the state upon whom personal service was not perfected, and did not appear or submit to the jurisdiction of the court, is void. ... a fundamental *Constitutional* right which has been zealously guarded by both state and federal courts. Later decisions are to the effect that any rule of the court or statute intended to abridge the right are not to be followed by the federal courts; the question being one which concerns the due process of Amendment14." [3] Amend.14, sec.1: No state shall make or enlarge any law which shall abridge the privileges or *immunities* of citizens of the United States.

### THE SUPREMACY CLAUSE OF AMENDMENT 14

"This provides that the federal laws, treaties of the United States, are the supreme law of the of the land and that state laws are bound to apply them in cases that are applicable.

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[1] (1970) "Mandamus" 52 Am Jur 2d sec 4 @ 333.

[2] U.S. CONST. ART. III § 2 [2].
(1970) "Mandamus" 52 Am Jur 2d § 28 @ 353.

[3] "Constitutional Law" 81 A.R.L., Annotated. @ 162.

THE DUE PROCESS CLAUSE OF THE 14th AMENDMENT

"Imposes limitation on the circumstances under which a state court may validly summon before it a person who is situated outside the state." [4]

"The Supreme Court over the period since 1960 has sustained virtually ever state assertion of jurisdiction over interstate business, involved in local transactions, has *reversed* states' attempts to assert jurisdiction over the following: a *nonresident* parent for support of a child living in state;"[5] Kulko v Superior Court 436 U.S. 84, 98 S. Ct. 1690, 56 L. Ed. 2d 132 (1978).

ORIGINAL JURISDICTION OF THE U.S. SUPREME COURT

Article III Section 2. [2]

"In all cases affecting Ambassadors, other public ministers and Consuls, and those in which a state shall be a party, the supreme Court shall have original jurisdiction. ..."

MAINE RULE 4 (e),(f)

Maine rule 4 (e),(f) is an example of a state that has enacted rules that deny my civil rights, due process, in this case.

"What cannot be done directly because of constitutional restrictions cannot be accomplished indirectly by legislation which accomplishes the same result." [6]

Stanley v Jefferies 86 Mont. 11, 284 P 134 70 A.R.L. 166.

"The United States Supreme Court has declared that it is the duty of courts to be watchful for the constitutional rights of its citizens...the judiciary to declare null and void all legislation clearly repugnant to the supreme law of the land." [7]

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**ARGUMENT**

The following quotations argue that the *monetary* judgment issued in divorce action 82-DV-422 is invalid and should be set aside. They illustrate that Maine violated the petitioners civil liberties under **42 USCA § 1983 and U.S. Constitution "Supremacy Clause" and "Due Process Clause"of Amend. 14**

PERSONAL JURISDICTION

"Persons subject to the jurisdiction of the state court.

(a) Generally service of process is indispensable.

(b) Service by valid rules is required.

(c) Basic methods of obtaining personal jurisdiction are:

(1) Personal service *within* the jurisdiction of the court.

(2) Service on a domiciliary temporarily outside the

jurisdiction, on the theory that authority of the state over one of its citizens is not terminated by the mere fact of his absence.

(3) Service on a nonresident who has sufficient contacts with the forum state.

(4) Service on an agent..." [8]

All of the above assume that there is a legal ground for an action against the defendant; so the Maine court may claim long-arm jurisdiction. The petitioner does not qualify in any of the above.

JURISDICTION OVER A NONRESIDENT HUSBAND

"A court cannot, as a general rule, enter a personal decree or judgment for support, maintenance, or alimony in favor of a wife against a nonresident husband, where he is not personally served with process of service *within* the state, but is brought before the court only constructively by publication of notice, or by personal service in another state." [9]

PERSONAL SERVICE

"In an action in personam, such as a monetary judgment, personal service on the defendant is required.

A court may not read into a statute, or rule, a method of substituted service where no such method is provided, also by clear language personal service is indicated by the plaintiffs' statement of claim. Personal service within the jurisdiction of court is the ordinary form of service...Personal service on a non-resident who does not waive such service, an effectual judgment may ordinarily only be rendered on property which has been brought under the control or jurisdiction of the court." [10]

MODES OR METHODS OF EFFECTING SERVICE

..."rules prescribing the manner of personal service must be strictly pursued. The plain requirements of service of process

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[8] (1990) "Process" 62B Am Jur 2d sec. 12 @ 753.

[9] (1998) "Husband and Wife" 41 Am Jur 2d sec. 230 @ 153.

[10] (1990) "Process" 62B Am Jur 2d sec. 202 @ 905.

by personal delivery to a defendant are that service must be made by delivering the summons *within the state* to the person to be served. Unless the specified requirements are complied with, there is *no valid* service." [11]

SERVICE AND JURISDICTION DISTINGUISHED

"The concepts of service of summons and jurisdiction of the person are not coextensive. Service on a nonresident defendant by substituted service in a *divorce* action establishes jurisdiction in *rem* and not in personam. The concept of "divisible divorce" recognizes that a dissolution proceeding has two separable aspects, that relates to the marital res and that which relates to the property rights and obligations of the parties; thus, while constructive service is sufficient for adjudication of the former, personal jurisdiction is generally required for the latter. A court may dissolve a marriage in an ex parte proceeding against a nonresident spouse, and it may determine a custody dispute against a nonresident spouse over whom it cannot exercise personal jurisdiction, but without some act by the nonresident spouse which confers personal jurisdiction, such as consent or a general appearance in the action, the court may not enter an order affecting that spouse's monetary obligations or rights." [12]

PERSONAL JUDGMENT

"A personal judgement based on constructive or substituted service on a *nonresident* who does not appear or otherwise assent to such a mode of service is contrary to **due process of law**, and is not valid either in the state where it rendered or elsewhere. This doctrine applies to all kinds of constructive or substituted process, whether service by publication, or personal service beyond the jurisdiction in which the judgment rendered such a judgment is not required to be enforced in another state, by the full faith and credit clause of the United States

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[11] (1990) "Process "62B Am Jur 2d sec. 203 @ 906.

[12] (1998) "Divorce and Separation" 24 Am Jur 2d sec.285 @ 433,444.

Constitution ,or the congressional enactment passed in aid there of. This rule applies to a judgment of revival, whether it is a new judgment or rendered in a proceeding regarded as a continuation of an original action, for purposes of execution. In summary it is beyond question that a personal judgment against a nonresident is ***invalid*** even in the state where it was rendered where such a nonresident was not served *within* the state and did not appear or expressly or impliedly assent to constructive or substituted service in serving him." [13]

MAINE LONG-ARM STATUTE

The petitioner argues that his rights to due process preclude the Maine courts exercise of jurisdiction under the Maine long-arm statute, because of the facts of this particular case.

"Under the minimum contacts test, no binding judgment may be rendered against an individual or a corporation unless he has contacts, ties, or relations with the forum jurisdiction." [14]

The Maine long-arm statute, as applied in this case, violate due process not only on the ground that, upon its face or as applied it does not meet "minimum contacts" requirement, but also on the ground that its provisions for notice and service upon the nonresident are inadequate.

*Rule 4 (e),(f) was changed in 1980 to allow for personal service on nonresidents outside the state; and it is now, as applied, ambiguous and vague. Vague laws are unconstitutional, as applied in this case. [15] *See Rule 4 (e),(f) verbatim in the appendix, page 23.

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[13] (1990) "Process" 62 B Am Jur 2d sec. 173 @ 878.

[14] (1990) "Process" 62 B Am Jur 2d sec. 186 @ 890.

[15] (1998) "Constitutional Law" 16 Am Jur 2d sec. 920.

REASONS TO GRANT WRIT OF MANDAMUS

The aid I am requesting is relief from the monetary judgment issued from Maine state court case 82-DV-422. The petitioner is requesting the Court issue a writ of mandamus. At the U.S. District Court in Bangor I filed a case for relief, it was dismissed as frivolous. I have still not had a trial in this case.

"Where the entire proceeding under a statute are void because of the unconstitutionality of sections relating to the mode of procedure, it is not always necessary to first seek redress by appeal..." [16]

ASSIGNMENT OF JUDGMENT

Janet Moore *assigned* her alleged monetary judgment to the Maine Dept. of Human Services for collection.

"Neither the personal rights created by marriage nor the obligations flowing from it can be *assigned, transferred, or delegated.*" [17]

GARNISHMENT BY ME. D.H.S

The Maine D.H.S. does not have a court order for garnishment of S.S. benefits in this case.

"Due process of the 14th Amendment of U.S. Constitution requires *notice* and an opportunity to be heard before a pre-judgment garnishment of wages." [18] I have not had that opportunity.

**Mandamus should issue in this case.**

"Mandamus will issue under 28 U.S.C.S. sec. 1361 when three basic elements **coexist:**

(1) A clear and legal right in the plaintiff to the right sought.

(2) A plainly defined and peremptory duty on the part of the defendant to do the act in question.

(3) No other adequate remedy is available.

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[16] (1970) "Constitutional Law" 16 Am Jur 2d sec. 176 @ 567.

[17] (1970) "Marriage" 52 Am Jur 2d sec. 5 @ 868.

[18] ( Blacks Law Dictionary ) 6th Ed. "*Garnishment*" @ 680.

Supp.127, 435 F Supp.[20]

"It is the *adequacy* of the other remedy not its mere existence that prevents mandamus from issuing." [21]

## A CLEAR AND LEGAL RIGHT

"The life force of a process in personam is limited to the territorial jurisdiction of the court that issued it, personal service on a nonresident defendant, outside the jurisdiction of the court, does not suffice to give the court jurisdiction over the person of the defendant...the courts acquisition of jurisdiction over property, does not draw to it jurisdiction over the person of the owner living in another state." [22]

"The jurisdiction of a court is subject to territorial limitations. Its jurisdiction cannot extend beyond the territory belonging to the sovereignty on behalf of which it functions." [23]

"*Mandamus* is generally the appropriate remedy to determine whether a inferior tribunal acted... in excess of its jurisdiction." [24]

"The writ of mandamus will issue to remedy an unauthorized assumption of jurisdiction." [25]

## MINIUM CONTACTS

"The minimum contacts test allows a state to acquire personal jurisdiction over a nonresident defendant, even the

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[20] (1998) "Mandamus" 52 Am Jur 2d Supp. sec. 18 @ 82.

[21] (1970) "Mandamus" 52 Am Jur 2d sec. 49 @ 373.

[22] (1995) "Courts" 20 Am Jur 2d sec. 105 @ 407.
(1990) "Process" 62 Am Jur 2d sec. 74

[23] (1995) "Courts" 20 Am Jur 2d sec. 115 @

[24] (1970) "Mandamus" 52 Am Jur 2d sec. 311 @ 640.

[25] (1970) "Mandamus" 52 Am Jur 2d sec. 312 @ 641.

nonresident is not personally served with process within the state.

(a) These contacts *can* exist when the defendant was:

(1) Doing business in the state.

(2) When the defendant committed a *tort* within the state.

(3) When he or she owned or otherwise dealt with real estate in the forum state." [26]

The petitioner meets *none* of the minimum contact requirements. The monetary judgment in case 82-DV-422 appears to violate my *civil rights* under **[ 42 USCA § 1983]**.

"Mandamus is an appropriate remedy for the enforcement of *civil rights*." [27]

A PLAINLY DEFINED PEREMPTORY DUTY

The following is the plainly defined duty of the Maine court system:

"A public officer is duty bound to exercise the judgment or discretion which is reposed in him by the law." [28]

"Mandamus lies where the law imposes upon a public officer a specific duty which he refuses to perform because of a erroneous conclusion as to his duties." [29]

"With respect civil action, it is the general rule that mandamus will lie on the application of a private person to compel a court, or magistrate, to perform his duty." [30]

"Mandamus lies to compel judges of inferior courts to perform acts which the law specifically enjoins as duties arising

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[26] (1995) "Courts" 20 Am Jur 2d sec. 106 @ 408.

[27] (1970) "Mandamus" 52 Am Jur 2d sec.65 @ 390.

[28] (1970) "Mandamus" 52 Am Jur 2d sec. 77 @ 398.

[29] (1970) "Mandamus" 52 Am Jur 2d sec 82 @ 405.

[30] (1970) "Mandamus" 52 Am Jur 2d sec. 303 @ 633.

out of office." [31]

The Supremacy Clause of Amendment 14 directs the Maine Court to follow Due Process in this case, *instate service.*

NO OTHER ADEQUATE REMEDY

On Aug. 7, 1981 Maine Rules of Court were amended. The word *shall* in **rule 4 (e), (f)** was changed to *may*, presumably to allow Maine courts to circumvent Constitutional Law, due process, that was the result in this case. If *may* is held permissive, by Maine courts, process is allowed to be served personally, on a *nonresident*, out of state. Rule 4 (e) was amended at the same time to allow the same, the rule now appears vague and ambiguous.

"Rules relating to service of process are *mandatory*...if a party is not served in that manner any judgment is *void.*" [32]

"The court may not promulgate rules in order to diminish constitutional rights,..." [33]

"...the legislature is powerless to abridge or enlarge the constitutional jurisdiction of the court." [34]

The statements of law above demonstrate that the Maine Court System does not offer an adequate remedy to resolve the monetary issue of case, 82-DV-422. The attempt in Federal Court has also failed. In spite of Constitutional law, the State of Maine has successfully frustrated the petitioner in this case. The State has, indeed, had the aid of the United States Federal Court, and the Social Security Administration, a garnishment of $300 against my S.S. disability benefit, without a court order. The petitioner believes Constitutional law is clear and well settled in regard to this case, and can only trust the Court agrees.

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[31] (1970) "Mandamus" 52 Am Jur 2d sec. 302 @ 628.

[32] (1994) "Judgments" 46 Am Jur 2d sec. 20 @ 384.

[33] (1995) "Courts"20 Am Jur 2d sec. 49 @ 368.

[34] (1995) "Courts" 20 Am Jur 2d sec. 58 @ 375.

## EXCEPTIONAL CIRCUMSTANCES THAT WARRANT THE COURTS DISCRETIONARY POWERS FOR GRANTING A WRIT OF MANDAMUS

In this case John suggests he has been deprived of his civil rights under **[ 42 USC A § 1983 ].**

That occurred in the 1982 divorce action in which Judge Eugene Beaulieu issued a monetary judgment without first having valid in personam jurisdiction. It was repeated when the Federal Court dismissed an action for relief, 96-272-B. "The passage of time, however great, does not affect the validity of a judgment **and cannot render a void judgment valid. ...**" [35]

The petitioner believes that Judge Beaulieu *usurped* his judicial authority by issuing that judgment.

"Only exceptional circumstances, amounting to a judicial *usurpation* of power, will justify the invocation of the extraordinary remedy of a courts issuing a writ of mandamus." [36] Allied Chemical Corp. v. Daiflon, Inc. (1980 U.S.) 66 L Ed 2d 193, 101 t 188,1980 C C H Trade Cas Par.63620.

The (1997) Hamm v. Hall case is nearly identical to *this* case. The Mississippi Supreme Court did not allow service to a nonresident outside the state.

"Under clear president set by this court and the *United States Supreme Court,* this court must reverse and declare the original order of child support to be *void.*." [37]

In the (1990) case Burnham v. Superior Court of Cal. (495 U.S.), argued Feb.28, 1990 the court held on page 604(a), 605(c) : (1) 604 (a); "To determine whether the assertion of personal jurisdiction consistent with due process, this Court has long relied on the principals traditionally followed by the

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[35] (1994) "Judgments" 46 Am Jur 2d § 16 @ 382.

[36] (1998) "Mandamus" 52 Am Jur 2d SUPP.sec.35

[37] (1997 Miss.) Hamm v. Hall 693 So. 2d 906 @ 907

American courts in marking out the territorial limits of each State's authority." See *Pennoyer v. Neff*, 95 U.S. 714,722.

(2) 605(c), "Nothing in *International Shoe* or the subsequent cases supports the proposition that a defendants presence in the forum state is not only unnecessary to validate such novel assertions of jurisdiction, but is itself no longer sufficient to establish jurisdiction." Pp. 616-6

**UNITED STATES CONSTITUTION ART. III § 2. [2] (1970) "MANDAMUS" 52 AM. JUR. 2d § 4, 5, 28, 29, 30.**

**II. JURISDICTION AND POWER TO ISSUE**

**§ 4. Nature and purpose generally.**

"Mandamus generally is held to be a remedy at law, to which the rules of procedure relating to actions at law are applicable, and, although sometimes held to be equitable in nature , and to be governed in its issuance by equity considerations, usually it is not classified as a suit or proceeding in equity. Mandamus is an original action, as distinguished from an appeal. It is a summary, expeditious, and drastic writ, of an extraordinary character, sometimes referred to as the highest judicial writ known to the law, and the law has properly erected many safeguards around it to prevent its issuance in cases irreparable injury and injustice might result. It is not a punitive remedy, but has for its purpose the protection of purely civil rights.

The writ is designed to compel action by the defendant, and it has been held to be a remedial writ of wide scope available in many instances to compel performance of statutory duties. The office of the remedy is to direct the will, and obedience to the writ may be enforced. Its purpose is to enforce rights *already established*, rather than to establish or declare the rights of parties. It proceeds in every case upon the assumption that the applicant has an immediate and complete legal right to the thing demanded, and that a corresponding duty of an imperative nature rests upon the person to whom the writ is sent. It is never granted in anticipation of an omission of duty, but only after actual default.

The writ is either peremptory or alternative, according to whether it requires the defendant to absolutely to obey its behest

or gives him an opportunity to show cause to the contrary. It is final in its nature; an interim or temporary writ of mandamus is unknown to the law." [38]

**§ 5. Extraordinary character.**

"Mandamus is an extraordinary remedy which is available only in cases in which the usual forms of procedure are powerless to afford relief. Courts proceed with great caution in granting the writ. It is not a common means of obtaining redress, but available only in rare cases, as a last resort, for causes that are really extraordinary. The courts are reluctant to issue the writ top compel action by executive officers, and only exceptional circumstances amounting to a judicial usurpation of power will justify the invocation of the remedy against a lower court." [39]

**D. United States Supreme Court**

**§ 28. Original Jurisdiction.**

"The Supreme Court has no authority to issue mandamus in cases over which it has neither *original* nor appellate jurisdiction. The provisions of the Federal Constitution vesting the whole judicial power of the United States in one supreme and such inferior courts as Congress shall from time to time ordain and establish, and providing that the Supreme Court shall have *original* jurisdiction of all cases affecting ambassadors or other public ministers, and consuls, and those cases in which ***a state*** shall be a party, do not give original jurisdiction to the Supreme Court to issue writs of mandamus in any other class of cases other than those named. And as original jurisdiction of the Court can only be that conferred by the constitution, the power to issue original writs of mandamus in the cases not within the provision cannot be given by Act of congress. Thus, the Federal Supreme Court has no original jurisdiction to issue a writ of mandamus to a cabinet

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[38] (1970) "Mandamus" 52 Am Jur 2d §4 @ 333, 334.

[39] (1970) "Mandamus" 52 Am Jur 2d § 5 @ 334, 335

officer, or to a subordinate executive or administrative officer; or or a judicial officer or tribunal. Where mandamus proceedings to compel a federal officer to perform a ministerial duty, instituted in the Circuit Court of the District of Columbia, have been removed to the Federal Supreme Court, and the officer resigns or dies, the court has no power to authorize a substitution of his successor as a party, since this would constitute the assumption of original jurisdiction." [40]

**§ 29. Enumerated cases.**

"As has been seen, the Constitution vests *original jurisdiction* in the United States Supreme Court of all cases affecting ambassadors and other public ministers, and consuls, and those cases in which a *state shall be a party.* It is provided by statute that the Supreme Court and all courts established by Act of Congress may issue writs necessary or appropriate in the aid of their respective jurisdictions agreeable to the usage and principals of law, and that an alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction. The Supreme Court may issue mandamus in aid of its appellate jurisdiction, and in the other enumerated cases that court has original jurisdiction according to the course of the common law to issue the writ. So, it may assume original jurisdiction to issue mandamus in cases in which a *state is a party,* or where one or more of parties is a diplomatic representative of some country." [41]

**CONCLUSION**

(1) In 1982 I was a resident of California, a nonresident of Maine.

(2) I was not served process in Maine; personal service is alleged in California.

(3) I did not, in any manner, submit to be served out of state.

(4) I did not answer or appear in the Maine court.

(5) The territorial boundaries of the State of Maine preclude the

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[40] (1970) "Mandamus" 52 Am Jur 2d § 28 @ 353, 354

[41] (1970) "Mandamus" 52 Am Jur 2d § 29 @ 354.

state from gaining personal jurisdiction over the petitioner.
(6) I committed no act, tort or breach, allowing the state to gain long-arm personal jurisdiction.
(7) The states long-arm statute does not validly reach monetary judgments in a divorce action.
(8) The Plaintiff produced no evidence that the defendant met the long-arm statute requirements.
(9) The Maine court requested no evidence that the defendant met the requirements of personal jurisdiction, the plaintiff's duty.
(10) Maine has no statute allowing the issuing of alimony.
(11) The Maine court used existing spousal support statutes to issue permanent alimony.
(12) 1U.S.C.S. sec 7 states; "...Spouse refers only to a person of the opposite sex who is a husband or wife."
(13) All marital obligations cease at the end of the marriage contract, divorce.
(14) A marriage contract is distinguished from all other contracts neither personal rights created by marriage, nor obligations flowing from it can be *assigned ,transferred.*, or *delegated.*.
(15) Janet Moore assigned and delegated to the Maine Department of Human Services the alleged monetary judgment held against John Ames, they complied and collected from John.
(16) The Maine Department of Human Services requested that the Social Security Administration deduct, and forward to them, $300 per month, they complied.
(17) There has never been a court order allowing that deduction.
(18) I notified the S.S.A. there was no court order, for the deduction, they ignored that letter.
(19) Federal courts do not have the valid right to interstate service of process.
(20) Federal law is supreme, 14th Amendment Supremacy Clause, logically State courts may *not* have interstate service of process.
(21) The exception, if a *nonresident* defendant commits a tort or breach of contract ***and*** has minimum contacts with that state; that state *may* have personal jurisdiction over that defendant.
(22) The void-for-vagueness doctrine may apply to Maine Rule 4(e),(f), service of process.
(23) The State of Maine has circumvented the mandatory

provisions of Rule 4 (e) and (f), by changing *shall* to *may*, making the out of state personal service, on a nonresident, and the resulting monetary judgment, *void*.. (1990) "Statutes" 73 Am Jur 2d §16 @ 278.

(24) The Hamm v. Hall 693 So. 2d 906 (Miss. 1997), Stanley v. Stanley A2d 636, (1970), Burnham v. Superior Court of California 495 U.S. (1990), and Penoyer v. Neff 95 U.S. are fundamentally the same as this case.

(25) The Federal Court at Bangor, Maine dismissed this case, as frivolous, in 1998, **case number 97-272-B.**

(26) The Civil Liberties Union responded, my case has merit.

(27) The U.S. Supreme Court has original jurisdiction in this case.

(28) At this time I have still not been able to have a trial.

(29)Lawyers consulted informed me I would have to pay alimony.

The petitioner respectfully suggests, the above exceptional circumstances warrant the Courts use of its discretionary power to issue the requested writ of mandamus.

PETITIONERS
REQUEST FROM THE COURT

The petitioner respectfully requests that the Court *set aside* the monetary judgment in case 82-DV-422. Furthermore, order *restitution, interest, court costs,* and *damages.*

SPECIFIC REQUESTS FROM THE COURT
*OR AS THE COURT SEES JUST*

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(1) Issue a peremptory writ of mandamus, setting aside the monetary judgment in case 82-DV-422.

(2) Restitution of the total amount sent to The State of Maine, D.H.S. from January 31,1994 until December 31 1999.

(a) The amount of restitution as of December 31,1999 is *$17,081.*

(3) Interest at *6% per annum* from the date the payments started, January 31, 1994, that amount is *$3,739, see page* 18,19.

(4) Interest at the rate of *10% per annum* on the unpaid balance, from the issuance of mandamus.

(5) The costs of court:

(a) Filling fee *$300.*

(b) Estimated printing costs *$1,100.*

(6) Medical expense:

(a) The petitioner received counseling and medication at the Togus Veterans Medical Center at Togus Me., at *no* cost; and Health Reach Network in Augusta, Maine, at *no* cost.

(b) Estimate *:$2,200.*

(7) Emotional distress :

(a) *$60,000* = [6 years at $10,000 per year].

(8) Loss of consortium :

(a) *$12,000* = [6years at $2,000 per year].

(9) Exemplary damages: *$250,000.*

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COMPUTATION OF INTEREST

| TOTAL AMOUNT PAID AND PREVIOUS YEARS INTEREST | | INTEREST DUE FOR YEAR |
|---|---|---|
| Paid in...1994..$ 3,500 | 6% x 3,500 | $210 |
| Paid in...1995.... 3,100<br>Interest..1994.... 210<br>Due .....1995.....6,810 | 6% x 6,810 | 408 |
| Paid in...1996..... 950<br>Interest..1995.....408<br>Due.....1996.....8,168 | 6% x 8,168 | 490 |
| Paid in...1997.....1,800<br>Interest..1996.....490<br>Due.....1997 ..10,458 | 6% x10,458 | 627 |
| Paid in...1998.... 4,131<br>Interest..1997..... 627<br>Due..... 1998...15,216 | 6% x15,216 | 912 |

Paid in... 1999....3,600
Interest...1998.....912
Interest...1999.....1,092.....thru 12/31/99.....1,092
TOTAL PAID $17,081 TOTAL INTEREST $3739

***AS OF SEPTEMBER 31, 1999***

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TOTAL REQUESTED

(1) Amount paid to Maine as of December 31,1999.....$ 17,081-
(2) Interest to 12/31/99.....3,739-
(3) Cost of court..... 1,400-
(4) Medical expense.....2 ,200-
(5) Emotional distress.....60,000-
(6) Loss of consortium.....12,000-
(7) Exemplary damages.....250,000-
(8) Total restitution and damages requested .....$346,420-
as of December 31, 1999.

Respectfully Submitted,
on November 26,1999 .

John Ames Pro se

## APPENDIX

STATE OF MAINE
PENOBSCOT, ss.

DISTRICT COURT
DISTRICT THREE
DIVISION OF SOUTHERN PENOBSCOT
CIVIL ACTION DOCKET
NUMBER 82-DV-422

JANET H. AMES,

Plaintiff

vs.

JOHN N. AMES,

Defendant

DIVORCE DECREE

HEARING HAD: January 10, 1983

Notice of the pendency of the complaint in this cause of divorce has been duly and seasonably given according to law. This cause was heard before me and the allegations and the evidence were fully presented and considered. A divorce from the bonds of matrimony is hear by ORDERED AND ADJUDGED to JANET H. AMES for the cause of cruel and abusive treatment.

THE Court FURTHER ORDERS that custody of the minor child, to wit: John N. Ames, Jr. shall be awarded to the Plaintiff, Janet H. Ames with right given to the said defendant, John N. Ames to visit with the said child but only in the state of Maine and not over night.

The Court FURTHER ORDERS that the defendant, John N. Ames pay to the plaintiff, Janet H. Ames the sum of fifty ($50.00)Dollars per week as child support; payable to Maine Department of Human Services so long as the plaintiff

receives AFDC, thereafter payable to the plaintiff.

The Court FURTHER ORDERS the defendant, John N. Ames pay to the plaintiff Janet H. Ames the sum of Fifty ($50.00) Dollars per week as alimony, payable to Maine Department of Human Services so long as the plaintiff receives AFDC, thereafter payable to the Plaintiff. In the event the amount of support and alimony exceeds the amount of AFDC, the excess shall be paid directly to the plaintiff, Janet H. Ames. IT IS FURTHER ORDERED AND ADJUDGED THAT THE said Defendant, John N. Ames pay all family debts, including but not limited to, taxes due the Internal Revenue Service, and to hold the Plaintiff, Janet H. Ames harmless therefrom.

The Court finds that all marital property consisting of personal property has been divided to the mutual satisfaction of the parties.

The Court ORDERS each party to keep the personal property in their possession.

IT IS FURTHER ORDERED AND ADJUDGED that the said defendant, John N. Ames pay to Martha Harris, Esq. The sum of Three Hundred Fifty ($350.00) Dollars for counsel fees.

Dated at Bangor, Maine this 20th day of January, 1983.

"S/ EUGENE BEAULIEU "

JUDGE, MAINE DISTRICT COURT

A TRUE COPY ATTEST : Thelma A. Holmes
Clerk

DATED: June 7, 1996

AFFIDAVIT OF SERVICE

STATE OF CALIFORNIA
COUNTY OF YUBA, ss.

I, JACK MILLER, being first duly sworn, depose and say: That I am duly appointed and qualified Deputy Sheriff in and for the said county of Yuba and that I am authorized to serve civil process by the laws of the state of California; that on the 22nd day of October, 1982, I made service of a Complaint, Summon, Affidavit and a Temporary Motion Upon the Defendant, John N. Ames at 4607 Olivehurst Ave. Olivehurst, CA. at 8:00 p.m. by personally handing copy to person served..

Service: $14.00 Notary: $2.00
Total: $16.00

Subscribed and sworn to before me this 25th day of October 1982.
Wilma J. Huff
Notary Public

My commission expires :
July 6, 1984.

ROBERT R. DAY
SHERIFF-CORONER
COUNTY OF YUBA
P.O. BOX 1389
MARYSVILLE, CA.
95901

Sgt. Jack R. Miller
Deputy Sheriff

**MAINE RULES OF CIVIL PROCEDURE**
RULE 4. PROCESS

Rule 4 (e),(f):

**(e) Personal Service Outside State.**

A person who is subject to the jurisdiction of the courts of the state may be served with summons and complaint outside the state, in the same manner as if such service were made within the state, by any person authorized to serve civil process by the laws of the place of service or by a person specially ap pointed to serve it. An affidavit of the person making service shall be filed with the courts stating the time, manner, and place of service. Such service has the same force and effect as personal service within the state.

**(f) Service Outside by Mail in Certain Actions.**
With service cannot, with due diligence, be personally made within the state, service of the summons and complaint may be made upon a person who is subject to the jurisdiction of the courts of the state by delivery to that person outside the state by registered or certified mail, with restricted delivery and return receipt requested, in the following cases:

(1) We're in the pleading demands a judgment that the person to be served to be excluded from a vested or contingent interest in or lien upon specific real or personal property within the state; or that such an interest or lien in favor of either party be enforced, regulated, defined or limited; or otherwise affecting the title to any property; or

(2) Where the pleading demands a judgment for divorce or declaring a marriage a nullity.

Service by registered or certified mail shall be complete when the registered or certified mail is delivered and the return receipt signed or when acceptance is refused, provided that the plaintiff shall file with the court either the return receipt or, if acceptance was refused, an affidavit that upon notice of such refusal a copy of the summons and complaint was sent to the defendant by ordinary mail.